

State of New Hampshire  
Division of Plant and Property Management  
Bureau of Purchase and Property  
25 Capitol Street, State House Annex  
Concord, New Hampshire 03301-6398

Date: 7/13/2004

Bid No.: 33

Date of Bid Opening: 7/30/2004

Time of Bid Opening: 1:30

PLEASE DIRECT ANY QUESTIONS REGARDING THIS BID TO: Michael P. Walsh II, Purchasing Agent/db

TEL. NO: (603) 271-3235 - FAX No. (603) 271-2700

REQUEST FOR BID FOR A CONTRACT FOR: **KEROSENE FUEL**

Unless specifically amended or deleted by the Division of Plant and Property Management, the following General Terms and Conditions apply to this Bid and any resulting Purchase Order or Contract.

**GENERAL CONDITIONS AND INSTRUCTIONS:**

**NATURE OF, AND ELIGIBILITY TO RESPOND.** This RFB is submitted in accordance with Chapter 21-1, and rules promulgated thereunder, and constitutes a firm and binding offer. An RFB may not be withdrawn unless permission is obtained from the Bureau of Purchase and Property.

RFBs may be issued only by the Bureau of Purchase and Property and are not transferable.

**SAMPLES AND DEMONSTRATIONS.** When samples are required they must be submitted free of costs and will not be returned. Items left for demonstration or evaluation purposes shall be delivered and installed free of charge and shall be removed at no cost to the State. Demonstration units shall not be offered to the State as new equipment.

**Proposals.** Proposals must be received at the Bureau of Purchase and Property before the date and time specified for the opening. Proposals must be submitted on this proposal form or exact copies and must be typed or clearly printed in ink.

Corrections must be initialed. Proposals are to be made less Federal Excise Tax and no charge for handling unless required by law.

Proposals will be made available to the public after the time of award. Proposal results will be given by mail only if requested in writing and accompanied by a self-addressed, stamped business size envelope.

**SPECIFICATIONS.** Vendors must submit on items as specified. Proposed changes must be submitted in writing and received at the Bureau of Purchase and Property at least five (5) working days prior to the bid opening. Vendors shall be notified in writing if any changes to the specifications are made.

**AWARD.** The award will be made to the responsible Vendor submitting a conforming RFB meeting specifications at the lowest cost unless other criteria are noted in the RFB. Unless otherwise noted, the award may be made by individual items.

If there is a discrepancy between the unit price and the extension, the unit price will prevail.

When identical low proposals are received the award will be made in accordance with the Administrative Rules.

Discounts will not be considered in making award but may be offered on the Invoice for earlier payment and will be applicable on the date of completion of delivery or receipt of Invoice, whichever is later. On orders specifying split deliveries, discounts will apply on the basis of each delivery or receipt of Invoice, whichever is later.

**PATENT INFRINGEMENT.** Any responding vendor who has reason to believe that any other responding vendor will violate a patent should such responding vendor be awarded the contract shall set forth in writing, prior to the date and time of opening, the grounds for his belief and a detailed description of the patent.

**ASSIGNMENT PROVISION.** The responding vendor hereby agrees to assign all causes of action that it may acquire under the antitrust laws of New Hampshire and the United States as the result of conspiracies, combinations, or contracts in restraint of trade which materially affect the price of goods or services obtained by the state under this contract if so requested by the State of New Hampshire.

**FEDERAL FUNDS.** This Division of Plant and Property Management, under RSA 21-1:14, VIII shall assure the continuation or granting of federal funds or other assistance not otherwise provided for by law by following the Federal Procurement Standards.

**STATE'S OPTIONS:** The Bureau of Purchase and Property reserves the right to reject or accept all or any part of any proposal, to determine what constitutes a conforming RFB, to award the RFB solely as it deems to be in the best interest of the State, and to waive irregularities that it considers not material to the RFB.

**PUBLIC INFORMATION:** The responding vendor hereby acknowledges that all information relating to this RFB and any resulting order (Including but not limited to fees, contracts, agreements and prices) are subject to these laws of the State of New Hampshire regarding public information.

**PERSONAL LIABILITY:** The responding vendor agrees that in the preparation of this RFB or the execution of any resulting contract or order, representatives of the State of New Hampshire shall incur no liability of any kind.

**PROOF OF COMPLIANCE.** The responding vendor may be required to supply proof of compliance with proposal specifications. When requested, the responding vendor must immediately supply the Bureau of Purchase and Property with certified test results or certificates of compliance. Where none are available, the State may require independent laboratory testing. All costs for such testing, certified test results or certificate of compliance shall be the responsibility of the responding vendor.

**FORM OF CONTRACT.** The terms and conditions set forth in any additional Terms and Conditions by the Bureau of Purchase and Property are part of the proposal and will apply to any contract awarded the responding vendor unless specific exceptions are taken and accepted and will prevail over any contrary provisions in Terms and Conditions submitted by the responding vendor.

**OFFER.** The undersigned hereby offers to sell to the State of New Hampshire the commodities or services indicated in the following page(s) of this RFB at the price(s) quoted in complete accordance with all conditions of this RFB.

**Company  
Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Tel.:(local)** \_\_\_\_\_ **(Toll free)** \_\_\_\_\_

**Fax#:** \_\_\_\_\_ **Email** \_\_\_\_\_

**Authorized  
Signature:** \_\_\_\_\_

(TYPE OR PRINT NAME)

This document must be signed by a person who is authorized to legally obligate the responding vendor. A signature on this document indicates that all State of New Hampshire terms and conditions are accepted by the responding vendor and that any and all other terms and conditions submitted by the responding vendor are null and void, even if such terms and conditions have terminology to the contrary. The responding vendor shall also be subject to State of New Hampshire terms and conditions as stated on the reverse of the purchase order.

# CONTRACT TERMS AND CONDITIONS

1. The State of New Hampshire, acting through the Division of Plant and Property Management, engages the firm or individual ("the Vendor") to perform the services and/or sale of goods, described in the attached State documents, if any, and the Vendor's bid or quotation, both of which are incorporated herein by reference.

**2. COMPLIANCE BY VENDOR WITH LAWS AND REGULATIONS.** In connection with the performance of this agreement, the Vendor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which shall impose any obligation or duty upon the Vendor, including, but not limited to civil rights and equal opportunity laws.

**3. TERM.** The contract, and all obligations of the parties thereunder, shall become effective on a specified date and shall be completed in their entirety prior to a specified date. Any work undertaken by the Vendor prior to the effective date shall be at his sole risk and, in the event that the contract shall not become effective, the State shall be under no obligation to reimburse the Vendor for any such work.

**4. CONTRACT PRICE.** The contract price, a payment schedule and a maximum limitation of price shall be as specified by the bid invitation and the Vendor's bid. All payments shall be conditioned upon receipt, and approval by the State, of appropriate vouchers and upon satisfactory performance by the Vendor, as determined by the State. The payment by the State of the Contract Price shall constitute complete reimbursement to the Vendor for all expenses of any nature incurred by the Vendor in the performance by the Vendor and complete payment for the Services. The State shall have no other liability to the Vendor.

**5. DELIVERY.** If the vendor fails to furnish items and/or services in accordance with all requirements, including delivery, the state may re-purchase similar items from any other source without competitive bidding, and the original vendor may be liable to the state for any excess costs.

If a vendor is unable to complete delivery by the date specified, he must contact the using agency. However, the agency is not required to accept a delay to the original delivery date. All deliveries are subject to inspection and receiving procedure rules as established by the State of New Hampshire. Deliveries are not considered accepted until compliance with these rules has been established. State personnel signatures on shipping documents shall signify only the receipt of shipments. All deliveries shall be FOB Destination.

**6. INVOICING.** All invoices must be in triplicate showing Order Number, Unit and Extension Prices and discounts allowed. A separate invoice shall be submitted for each order. Unless otherwise noted on the invitation to bid or purchase order, payment will not be due until thirty (30) days after all services have been completed, or all items have been delivered, inspected and accepted or the invoice has been received at the agency business office, whichever is later.

## **7. PERSONNEL.**

**7.1.** The Vendor shall disclose in writing the names of all owners (5% or more), directors, officers, employees, agents or subcontractors who are also officials or employees of the State of New Hampshire. Any change in this information shall be reported in writing within fifteen (15) days of their occurrence.

**7.2.** The person signing this agreement on behalf of the State, or his or her delegee ("Contracting Officer") shall be the State's representative for purposes of this agreement. In the event of any dispute concerning the interpretation of this agreement, the Contracting Officer's decision shall be final.

## **8. EVENT OF DEFAULT; REMEDIES.**

**8.1.** Any one or more of the following acts or omissions of the Vendor shall constitute an event of default hereunder ("Events of Default"):

**8.1.1.** failure to deliver the goods or services satisfactorily or on schedule; or

**8.1.2.** failure to submit any report required hereunder; or

**8.1.3.** failure to perform any of the other covenants and conditions of this agreement.

**8.2.** Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

**8.2.1.** give the Vendor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this agreement, effective two (2) days after giving the Vendor notice of termination; and

**8.2.2.** give the Vendor a written notice specifying the Event of Default and suspending all payments to be made under this agreement and ordering that the portion of the Contract Price, which would otherwise accrue to the Vendor during the period from the date of such notice until such time as the State determines that the Vendor has cured the Event of Default, shall never be paid to the Vendor; and

**8.2.3.** set off against any other obligation the State may owe to the Vendor any damages the State suffers by reason of any Event of Default; and

**8.2.4.** treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of any provision hereof. No such failure or waiver shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Vendor.

**10. VENDOR'S RELATION TO THE STATE.** In the performance of this agreement the Vendor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Vendor nor any of its officers, employees, agents or members shall have authority to bind the State nor are they entitled to any of the benefits, workmen's compensation or emoluments provided by the State to its employees.

**11. ASSIGNMENT AND SUBCONTRACTS.** The Vendor shall not assign, or otherwise transfer any interest in this agreement without the prior written consent of the State. No work required by this contract shall be subcontracted without the prior written consent of the State.

**12. INDEMNIFICATION.** The contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Vendor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this agreement.

**12.1 PATENT PROTECTION.** The seller agrees to indemnify and defend the State of New Hampshire from all claims and losses resulting from alleged and actual patent infringements and further agrees to hold the State of New Hampshire harmless from any liability arising under RSA 382-A:2-312(3). (Uniform Commercial Code).

**13. TOXIC SUBSTANCES.** In compliance with RSA 277-A known as the Workers Right to Know Act, the vendor shall provide Material Safety Data Sheets with the delivery of any and all products covered by said law.

**14. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given below.

**15. AMENDMENT.** This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.

**16. CONSTRUCTION OF AGREEMENT AND TERMS.** This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

**17. ADDITIONAL PROVISIONS.** The additional provisions (if any) have been set forth as Exhibit "A" hereto.

**18. ENTIRE AGREEMENT.** This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings relating hereto.

## **BID INVITATION FOR: KEROSENE FUEL**

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### **PURPOSE:**

The purpose of this bid invitation is to establish a contract in the form of a purchase order for supplying the State of New Hampshire, DRED-Bureau of Parks and Recreation with kerosene, in accordance with the requirements of this bid invitation and any resulting order. This product shall be delivered as specified during the period from date of award through **August 31, 2004** with delivery required to the location indicated in the F.O.B. section of this bid

### **AUDITS AND ACCOUNTING:**

The successful bidder shall allow representatives of the State of New Hampshire to have complete access to all records for the purpose of determining compliance with the Terms and Conditions of this bid invitation and in determining the award and for monitoring any resulting transaction.

At intervals during the bid term and prior to the termination, the successful bidder may be required to provide a complete and accurate accounting of kerosene fuel and quantities ordered and received by requesting agency.

### **VENDOR CERTIFICATIONS**

All bidders must be duly registered as a vendor authorized to conduct business in the State of New Hampshire.

- **STATE OF NEW HAMPSHIRE VENDOR APPLICATION.**
- Bidders must have a completed Vendor Application and W-9 Form on file with the NH Bureau of Purchase and Property. See the following website for information on obtaining and filing the required forms (no fee):  
<http://www.admin.state.nh.us/purchasing>
- **NEW HAMPSHIRE SECRETARY OF STATE REGISTRATION**
- A person or persons conducting business under any name other than his/her own legal name must register with the NH Secretary of State. Businesses are classified as 'Domestic' (in-state) or 'foreign' (out-of-state). Please visit the following website to find out more about the requirements and filing fees for both classifications: <http://www.state.nh.us/sos/corporate>

### **INSURANCE:**

Prior to award of this bid, the bidder shall furnish a Certificate of Insurance as evidence of existence of broad form comprehensive general liability (CGL) in minimum amount of not less than \$250,000.00 per claimant, and \$2,000,000.00 per incident to include fire and extended coverage in an amount not less than 80% of the whole replacement value of the property.

The bidder shall, at its sole expense, obtain said insurance and maintain in force, and shall require any sub-contractor or assignee to obtain and maintain in force, both for the benefit of the State. The certificates shall contain a clause prohibiting cancellations or modifications of the policy through **12/31/2004**.

The policies described above shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire.

### **ABILITY TO PROVIDE:**

Successful bidder **must** be capable of providing the State of New Hampshire agency with their entire requirements of kerosene fuel without any delay or product substitution and within the time frame specified. The bidder will be held responsible for maintaining product inventories at levels capable of supporting the specified State of New Hampshire agency location as required within this bid

### **ESTIMATED USAGE:**

The quantities of kerosene indicated in the offer section of this bid invitation are an estimate only for this location's annual requirement. These quantities are indicated for informational purposes only and shall not be considered minimum or guaranteed quantities, nor shall they be considered maximum quantities.

**BID AWARD:**

The award of the bid shall be based upon the total net low bid for kerosene as indicated in the "offer" section of this bid invitation.

**BID TERM:**

Term of bid shall be from the date of award through completion that **WILL BE ON OR BEFORE 8/31/2004.**

**BID PRICES:**

The prices bid by the successful bidder shall remain firm for the entire term of the contract and any extension thereof and shall **include delivery, taxes and all other charges**. Bid prices should be government and/or educationally discounted prices. Bid prices will not exceed (3) three places to the right of the decimal **example, \$1.025**

**PRODUCT COMPLIANCE:**

It is mutually agreed that if the kerosene sold, furnished and delivered by the successful bidder to the State of New Hampshire, does not conform to the specifications herein and/or standards established by the State of New Hampshire and/or Federal Government, the State reserves the right to purchase said fuel elsewhere charging any additional cost to the said bidder. The successful bidder will be responsible for removing the non-conforming fuel.

**PRODUCT TESTING:**

The State reserves the right to test any product delivered to the fuel location stated within this bid for compliance to the product ordered or the specifications and standards herein.

If the results of any such test performed determine that the product sold, furnished and delivered to any State locations, **does not** meet the specifications of the product ordered or the specifications and standards established by the State of New Hampshire and/or the Federal Government, the vendor responsible for the error will be held responsible for removing the incorrect product from the delivery location, cleaning of the tank if necessary, paying all charges associated with the testing procedure and while this condition exist, the State reserves the right to purchase said fuel elsewhere charging any additional cost to the original vendor. The responsible vendor would also be subject to the relative "default" conditions as stated in the Terms and Conditions section of this bid.

**FEES AND/OR TAXES:**

For tax collection purposes it is in the best interest of the bidder to be a licensed distributor. Information may be obtained from the New Hampshire Department of Safety, Division of Road Toll (603) 271-2311.

Any and all relevant fees and taxes that are in place at the time of the bid offer **will be included** in the offered price per gallon to include all transportation charges incurred by the bidder. This includes any environmental, superfund, transportation or excise tax or fees, which the bidder may be deemed responsible. However, the State will allow increases or require decreases in the offered price per gallon equal to the value of the fee or tax if such increases or decreases occur after the award of the contract. The State or federal government may assess such increases or decreases. No increases in the offered price per gallon will be allowed without the prior approval from the Director of the Plant & Property Management.

The State of New Hampshire will complete a Certificate of Exemption at the written request of the successful bidder in support of a claim for credit or payment under section #6427 of the Internal Revenue Code.

**ORDERING PROCEDURE:**

The agency shall coordinate their orders by telephone, fax or e-mail directly to vendor.

**INVOICING:**

Invoicing shall be done on the basis of each delivery. Bidder shall render separate invoices in triplicates for each sale or delivery made to the specified delivery location. Invoices shall clearly indicate the quantity delivered, dipstick reading, description of product delivered, date of delivery, tank I.D. number, purchase order number, delivery locations and contract price excluding all State/Federal taxes and fees. Invoice will indicate the price per gallon as stated in the bid offer. A breakdown of product type and total gallons must be indicated on delivery ticket.

**PAYMENT SCHEDULE:**

Partial payment is authorized for this bid.

**F.O.B.:**

The F.O.B. shall be destination to the following delivery point:

DRED – PARKS & RECREATION  
POWER STATION  
TOP OF MOUNT WASHINGTON  
VIA THE AUTO ROAD - RT 16  
GORHAM, NH 03581

**REQUISITION NO.:** 199542

**OFFER:**

Bidder hereby offers to furnish kerosene to the delivery location stated below, in accordance with all of the requirements of this bid invitation at the following price per gallon for the term of this bid term and any extension.

**The unit prices and extensions indicated should be government and/or educationally discounted prices.**

<u>EST.</u> <u>SEMI-ANNUAL</u> <u>QTY.</u>	<u>PRODUCT</u>	<u>BID</u> <u>PRICE</u>	<u>DELIVERED</u> <u>EXTENSION</u> <u>TOTAL</u>
75,000 GAL+/-	KEROSENE (PER SPECIFICATION ENCLOSED)	\$ _____ / GALLON	\$ _____

**DELIVERY LOCATION, REQUIREMENTS AND SPECIFICATIONS:**

- 1) The State agency, bidder (and trucking firm if third party) will coordinate all deliveries. State forces will escort the fuel convoy up and back down the auto road after delivery.
- 2) **Method of delivery will be tractor-trailer.** State agencies require the awarded bidder to have their delivery personnel stick tanks before and after deliveries and note said readings on delivery slips. A breakdown of product type and total gallons must be indicated on delivery ticket. Delivery load slips will be left at delivery site; **failure to leave delivery slip with all required information included for each truckload may create a delay in payment to the bidder.**
- 3) **If a spill should occur during delivery** or bidder should deliver the wrong product to tanks, the bidder assumes all responsibility and liability for spill, clean-up and/or cleaning tank.
- 4) All deliveries will take place after the State park has closed for the day and a sweep of the auto road has been completed by State forces to be sure the road is clear for delivery. The auto road should be available between 6:30 and 7:00 pm nightly, (seven (7) nights a week), to begin the delivery assent. Bidder/trucking firm may call the auto road @603-466-222 to be sure there is no road maintenance planned for the scheduled delivery date.
- 5) The delivery format for this bid will require the estimated total volume of kerosene specified take place over 5 different delivery nights with each nights delivery being comprised of three (3) tractor trailers delivering a total of 16,500+/- gallons per night to one or more of the five (5) 20,000 gallon available storage tanks.
- 6) **The bidder needs to be aware that the DELIVERY LOCATION IS AT THE TOP OF MT. WASHINGTON and that rapid changes in weather and temperature occur on top of the mountain. With windows of good weather being small and on short notice, this will require the bidder to make delivery on the same date the order is placed. It would be in the bidder's best interest to accomplish all deliveries as soon as possible and feasible after award of the purchase order.**

**DELIVERY- SAFETY REQUIREMENTS AND PROCEDURES:**

**All truck drivers will adopt the following safety procedures when making deliveries to the specified location:**

- 1) Exercise caution when maneuvering to avoid damage to containment walls.
- 2) Inspect tank, fittings and liquid level indicator prior to filling.
- 3) Place drip pans under all hose fittings prior to loading or unloading.
- 4) Block truck wheels before starting to load or unload.
- 5) Remain with the vehicle while loading or unloading fuel.
- 6) Drain loading or unloading line to storage tank when loading or unloading is complete.
- 7) Verify that all drain valves are closed before disconnecting loading or unloading lines.
- 8) Inspect vehicle before departure to be sure all loading or unloading lines have been disconnected and vent valves are closed.
- 9) Immediately report any leakage or spillage to the onsite personnel.

**Kerosene Fuel**

**REQUIREMENTS AND SPECIFICATIONS:**

- 1) KEROSENE FUEL SPECIFICATIONS:

**TEST BEING PERFORMED**

GRAVITY, API  
FLASHPOINT, F.  
SULFUR,% WT.  
CLOUD POINT, F.  
POUR POINT, F.  
DISTILLATION.  
COLOR, SAY BOLT  
CONDUCTIVITY, PS  
VISCOSITY, CST 104F

**TEST METHOD**

ASTM D 4052  
ASTM D 56  
ASTM D 4294  
ASTM D 2500  
ASTM D 97  
ASTM D 26  
ASTM D 156  
ASTM D 2624  
ASTM D 445

- 2) Successful bidder at their expense shall furnish on request an analysis from an approved laboratory of the fuel delivered.
- 3) Successful bidder may utilize other distributors for supply and/or delivering kerosene fuel **with prior** written approval from the Director of Plant & Property Management. Such approval will not warrant an increase in the State's purchasing price.
- 4) Successful bidder guarantees to be the base supplier if necessitated by imposition of State or Federal allocation plans.
- 5) Successful bidder is responsible for replacement of any State property that is damaged by the bidder(s) employees, equipment or vehicles.

**BIDDER PLEASE COMPLETE:**

BIDDER NAME & ADDRESS

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CONTACT PERSON (S)

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TEL. # (800 & LOCAL)

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FAX. #

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E-MAIL ADDRESS FOR CONTACT PERSON (S)

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REMIT ADDRESS, IF DIFFERENT  
FROM ABOVE TO INCLUDE TEL #  
AND FAX.

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TERMINAL NAMES AND LOCATIONS THAT BIDDER WILL PURCHASE / KEROSENE FROM TO SUPPLY THE  
STATE OF NEW HAMPSHIRE:

TERMINAL NAME

COMPLETE LOCATION & TEL #

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**NOTE TO VENDORS:**

RSA 21-I: 13-a provides, in part, that no information shall be made available to the public from the time the bid is made public and until it is actually awarded, in order to protect the integrity of the public bidding process. Because of the many line items listed in this bid, prices will only be made public after an award is made. Bidder(s) may submit a self-addressed stamped envelope and a copy of the bid results will be mailed to them.